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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN SCOTT MAYHEW,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

WM. MATTHEW BYRNE, JR.,
United States Attorney,
ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,
JOHN W. HORNBECK,
Assistant U. S. Attorney,

1200 U. S. Court House
312 North Spring Street
Los Angeles, California 90012

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WM. B. LUCK, CLERK

Attorneys for Appellee,
United States of America

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1200 U. S. Court House
312 North Spring Street
Los Angeles, California 90012

Attorneys for Appellee,
United States of America

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I

JURISDICTIONAL STATEMENT

This is an appeal from a conviction of conspiracy to receive, conceal and facilitate the transportation of marihuana after illegal importation in violation of Title 21, United States Code, Section 176(a). Appellant, co-defendant SANDRA LEE HALLOCK, and indicted co-conspirator THOMAS J. WORKMAN, were indicted on January 11, 1967 [C. T. 2]. ^{1/} Appellant and co-defendant both entered a plea of not guilty and trial by jury commenced on April 9, 1967, before the Honorable Jess W. Curtis, United States District Judge, Central District of

^{1/} C. T. refers to Clerk's Transcript.

California. On April 7, 1967, both defendants were found guilty and appellant was sentenced to six years imprisonment on April 24, 1967 [C. T. 16]. Jurisdiction of the District Court was based on Section 176(a), Title 28, United States Code and Section 3231, Title 18, United States Code. Jurisdiction of this Court to entertain the appeal is derived from Sections 1291 and 1294, Title 28, United States Code.

II

STATUTE INVOLVED

Title 21, United States Code, Section 176(a) provides in pertinent part:

" . . . whoever, knowingly, and with intent to defraud the United States . . . receives, conceals, . . . or in any manner facilitates the transportation, (or) concealment . . . of such marihuana after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or whoever conspires to do any of the foregoing acts, shall be imprisoned not less than five years or more than twenty years and, in addition, may be fined not more than \$20,000 . . .

"Whenever on trial for a violation of this subsection, the defendant is shown to have or to have had the marihuana in his possession, such possession shall

be deemed sufficient evidence to authorize conviction unless the defendant explains his possession to the satisfaction of the jury."

III

STATEMENT OF FACTS

On December 4, 1966, Ronald McAuley attended a pre-arranged meeting [R. T. 86, 87] ^{2/} at the Carriage Inn Motel, Van Nuys, California, at which time appellant stated that he desired someone to bring marihuana into the United States from Mexico [R. T. 90]. Several conversations ensued in the next few days before a meeting was accomplished between McAuley, appellant, and co-defendant Hallock on December 17, 1966 [R. T. 92] at which time definite plans were made for McAuley to drive a load of marihuana from Mexico into the United States [R. T. 95]. A car was purchased in Los Angeles by the appellant to transport the marihuana [R. T. 98]. Appellant then met McAuley in Mexico [R. T. 105], on December 17, 1966, confirmed the transportation of the contraband and gave McAuley a telephone number to call when the marihuana was in the United States [R. T. 109]. On December 18, 1966 [R. T. 113] McAuley entered the United States driving the car previously purchased by appellant [R. T. 112]. After meeting with customs officials [R. T. 114], a phone call

^{2/} R. T. refers to Reporter's Transcript.

was placed to the number supplied by appellant and details were arranged as to the pick-up of the marihuana in North Hollywood, California [R. T. 116, 119]. The automobile was then driven to the location designated in the phone call made by McAuley where it was picked up and driven away by co-defendant Workman [R. T. 119].

IV

ARGUMENT

THE TRIAL COURT DID NOT ERR IN PER-
MITTING ADMISSIONS MADE BY DEFENDANT
IN THE FURTHERANCE OF THE CONSPIRACY
TO BE INTRODUCED INTO EVIDENCE

To support his allegation that the Government made repeated references to the appellant's involvement in the field of narcotics which so prejudiced the appellant that he was denied a fair trial and impartial trial, counsel for the appellant cites page 52, lines 17 through 24, of the United States Attorney's opening statement which said that, "During this meeting, the two defendants were present with Mr. McAuley. Mr. McAuley was advised by defendant Mayhew that he was expecting marihuana from Mexico, that he was experiencing trouble with his runners; the people who actually drove the loaded vehicle up from Mexico with the marihuana. He referred to these people as his astronauts." There is nothing in that quotation or in any other portion of the opening statement that was not later substantiated by competent evidence. It is submitted that, from the defendant's point of view,

every allegation by the Government of facts that it intends to prove in support of the charges contained within the indictment is prejudiced, but it is axiomatic that the prosecution has a right to state those facts which the Government intends to prove. Corroboration of the contested opening remarks was provided by customs agent Norman Noordenvier on page 166, lines 2, 3 and 4 of the Reporter's Transcript, in which Agent Noordenvier quoted a conversation in which appellant used the exact terminology, referring to his runners, as the United States Attorney presented to the jury in his opening statement.

Counsel for appellant then accuses the United States Attorney on page 1 of his opening brief of alleging the statement found on page 85, lines 9 through 12. A reading of the transcript reveals that the debated remark was actually made by a Government witness in explaining a conversation made by the co-defendant Hallock in setting up the first meeting with the witness and appellant.

The remaining instances cited by counsel for appellant as constituting prejudicial error involve admissions by the appellant contained in conversations made in furtherance of the conspiracy for which he was convicted. For instance, counsel for appellant objects to a conversation on pages 88 through 92 in which the Government's witness testified that appellant outlined the difficulties that he was having in obtaining people to smuggle loads of marihuana and his desire for "a family type of person" to transport the marihuana. Again, the admissions by appellant to which his

counsel objected, which are contained on pages 96 and 107, related to the details of the plan to introduce marihuana into the United States from Mexico and appellant's prior activities in smuggling narcotics. Corroboration of the witnesses' testimony was afforded by a customs agent whose responses to questions by the United States Attorney are contested by appellant on page 3 of his opening brief. As the trial court properly stated on page 166, lines 12 and 13, "He (Agent Noordenvier) is recalling or stating the conversation which took place". Thus, in making his objections to admissions made by the appellant in furtherance of the conviction for which he was indicted and convicted, counsel for appellant has failed to take cognizance of the basic rules of evidence relating to the admissibility of admissions of a defendant.

Carbo v. United States, 314 F.2d 718 (1963);

Enriquez v. United States, 314 F.2d703 (1963).

A reading of the transcript reveals no such improprieties on the part of the United States Attorney as counsel for appellant has suggested. The Government welcomes the obligation placed upon it as a servant of all the citizens of the United States and the prosecuting attorney in this case followed the mode of conduct proscribed by the Supreme Court in Berger v. United States, 295 U.S. 78, 79 L.ed. 1314, 55 S.Ct. 629, in presenting competent, relevant testimony concerning the appellant's admissions as to his involvement in the conspiracy for which he was charged.

CONCLUSION

For the foregoing reasons it is respectfully submitted that appellant was not prejudiced by the introduction of his own admission into evidence and the judgment of the trial court should be affirmed.

Respectfully submitted,

WM. MATTHEW BYRNE, JR.
United States Attorney

ROBERT L. BROSIO
Assistant U. S. Attorney
Chief, Criminal Division

JOHN W. HORNBECK
Assistant U. S. Attorney

Attorneys for Appellee,
United States of America

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ John W. Hornbeck

JOHN W. HORNBECK

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